IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1451 of 1999

in

SPECIAL CIVIL APPLICATIONNo 4881 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANANJAY PRAHLAD BHOLE

Versus

STATE OF GUJARAT

Appearance:

Mr B.P.Tanna for TANNA ASSOCIATES for Appellants
Ms Manisha Lavkumar , AGP for Respondent No. 1
Mr. Rakesh Johri with Mr. H.B.Shethna for respondent No.4.
MR MUKESH R SHAH for Respondent No. 5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 10 /04/2000

CAV JUDGEMENT

Per Thakker, J.

The present appeal is filed against the judgment and order passed by the learned Single Judge in SCA No. 4881 of 1999 on 7th September, 1999. That petition was filed by Vasudevanand Sthanak Adhyapak Mandir and another for an appropriate writ, order or direction declaring the result of the students who had studied with petitioner No.1 institute and appeared at the examination.

The case of petitioner No.1 was that it was a public trust which submitted an application to the State Government for granting permission to start the course of Diploma in Basic Education (DBEd)from academic year 1998-99. By a Government Resolution, dated September 4, 1998, the State Government granted permission for running the said course subject to certain terms and conditions. Accordingly, the course was commenced by petitioner No.1 by granting admission to the students in the month of December, 1998. In December, 1998, the State Examination Board informed the petitioner trust that examination of the students from the petitioner institution would not be conducted unless and until recognition shall be granted by the National Council for Teachers' Education, Bhopal. It appears that pursuant to the said intimation, the petitioner trust made an application on January 27, 1999 to the Council. The application was, however, rejected. In the meanwhile, the petitioner trust persuaded the State Examination Board to conduct the examination of the students who had completed their study for the academic year 1998-99. The Board agreed to conduct examination subject to the petitioner trust obtaining recognition from the Council. Accordingly, the students appeared at the examination but their results were not declared on the ground that the petitioner trust had not produced recognition from the Council. The petitioners, therefore, prayed to this Court that the Board may be directed to declare the results.

Affidavit in reply was filed by the Board as well as by the Council in which it was stated that no recognition was granted by the Council and hence, the petitioner trust could not have admitted students and as the action was illegal and contrary to law, results could not be declared.

It was contended by the learned advocate for the petitioners that since the petitioner trust was granted recognition by the State under the Gujarat Educational Institutions (Regulations) Act, 1984 and as the State Act would prevail over the Central Act, inasmuch as the subject related to education which was under the Concurrent List and the State Act was prior in point of time than the Central Act which was enacted in 1993. Appropriate direction was required to be issued to the respondents to declare the results. Alternatively, it was urged that even if the Central Act overrides the State Act, since the petitioner trust commenced the course after obtaining permission from the State and as the students had undergone study and appeared at the examination, in the interest of justice and students at large , the results of those students who had completed the study and appeared at the examination should be declared. For future, appropriate directions may be issued.

On the other hand, it was contended on behalf of the Council that provisions of National Council for Teachers' Education Act, 1993 were clear on the point and they provided that no examination body can hold any examination unless the institution concerned has obtained recognition from the Council. No such recognition was obtained by the institute and hence, examination could not have been conducted. The action of the petitioner trust was, therefore, contrary to law and no direction may be issued by this Court to the respondents to declare results of the students who had studied at the petitioner institute.

Learned AGP, on behalf of the State also contended that permission was granted by the State as per Resolution,dated September 4, 1998 under the State Act, 1984 which did not absolve the petitioner from obtaining recognition of the Council under the Central Act. State Examination Board granted permission to allow students to appear at the examination on a representation being made by the petitioner institute that the Council would grant such permission ex-post-facto for the year 1998-99 and that if the examination would not be taken, students may be prejudicially affected . It is, however, not open to the petitioner institute to file a petition directing the respondent authorities to declare the results of the students who had studied in the institute which was not recognised by the Council.

Learned Single Judge, after considering rival contentions of the parties, held that it was not in dispute that

Diploma in Basic Education Course (DBEd) could not have been conducted by the petitioner institute unless it had obtained recognition under the National Council for Teachers' Education Act, 1993. Section 14 of the Act clearly enjoined that every institution offering or intending to offer a course or training in teacher education may make an application to the Regional Committee of the National Council for Teachers' Education for grant of recognition. In absence of such recognition,no institution can commence the course,

Considering the provisions of the Act , the learned Single Judge stated-

> "The provisions of the Act, therefore, make it clear that no institution can commence a course in teacher education without getting recognition from the Regional Committee of the National Council for teacher education. In the facts and circumstances of this case, the court is not required to examine the wider question sought to be raised by the learned counsel for the petitioner whether even if the National Council for Teachers education grants the recognition under the Central Act, whether State Government can still insist for permission under the State Act. In the facts and circumstances of the present case, there is no scope for such a contention being raised because the State Government had granted the permission under the State Act in September 1998."

On the basis of the above reasoning, the learned Single Judge held that there was no merit in the petition and the petition was liable to be dismissed. Learned Single Judge, however, made the following observations:

> "It is,however, clarified that dismissal of this petition shall not come in the way of the petitioner trust pursuing its application for recognition for the year 1999-2000 and if the Regional Committee of the National Council for teachers education gives recognition for the current academic year, dismissal of this petition shall not come in the way of the students admitted by the petitioner institution for the course in the year of 1998-99 being considered for admission to the petitioner institution for

the current year (1999-2000) on lines of the direction given by this court in Special Civil Application No.10240/98".

Mr. Tanna, senior advocate of M/s Tanna Associates strenuously argued that even if it is assumed for the sake of argument that there was some irregularity on the part of the petitioner institution and that, therefore, it did not deserve any sympathy, the present appeal is filed by the appellants who are students, who had not committed any illegality and/or irregularity . They are, therefore, innocent and they cannot be punished or penalised for so called illegality or irregularity committed by the institution.

He also submitted that the State Government granted necessary permission and only thereafter, the present appellants were admitted by the petitioner institution. Therefore, even if there was communication gap between the institute and the Council or between the Board and the Council or proper step was not taken by the petitioner institution, the appellants should not be made scapegoat and their future may be protected.

Finally, it was submitted that the appellants have undergone study and completed one year. Apart from the fact that they had spent substantial amount for prosecuting the study, valuable time of one year would be wasted without there being any fault on their part. In exercise of power ex debito justitiae , therefore, appropriate direction may be issued to the respondent authorities to declare results of the appellant-students with further direction that the petitioner institution will not continue or admit any student in future without obtaining recognition from the Council .

Mr Rakesh Johri with Mr. H.B.Shethna , on the other hand, supported the judgment and order passed by the learned Single Judge. He submitted that after considering the relevant provisions of both the Acts, the learned Single Judge dismissed the petition and there is no infirmity therein. He also submitted that all students were aware of litigation before the learned Single Judge and some of them were even attending the Court when the petition was placed for hearing. He urged that the status of the Council is independent of the Government or Board and even if the State Government had granted permission or Board allowed the students to appear at the examination, it does not mean that statutory power of the Council would become nugatory .

Hence, no direction can be issued to declare results of those students who had studied in an institute which was not recognised by the Council.

Relying upon various decisions of the Supreme court as well as of this Court, it was contended that such approach is always deprecated by the Courts and it has been emphasised that no misplaced sympathy should be shown towards students who had not undergone studies in recognised institutions. Reference, in this connection, was made to the following decisions:

A.P.Christians Medical Education Society vs. Govt.of A.P., (1986) 2 SCC 667;

State of T.N. vs. St. Joseph Teachers' Training Institute , (1991) 3 SCC 87;

State of Maharashtra vs. Vikas Sahebrao Roundale, (1992) 4 SCC 435;

Guru Nanakdeo University vs. Parminder Kaur Bansal. (1993) 4 SCC 401;

C.B.S.E. vs. P. Sunil Kumar, (1998) 5 SCC 377;

Special civil Application No., 10240 of 1998 decided on 14th December, 1998 decided by M.S.Shah,J.

In the facts and circumstances of the case, in our opinion, no illegality can be said to have been committed by the learned Single Judge in dismissing the petition. From the record as well as judgment of the learned Single Judge, it clearly appears that petitioner No.1 institution was not granted recognition by the Council. When such recognition was not granted, the institution could not have admitted students. It was no doubt contended that the State had granted permission, but it would be subject to grant of recognition by the Council which is a statutory body and which alone could grant such permission. In absence of grant of recognition by the Council, the Board could not have permitted students to appear at the examination. But as observed by the learned Single Judge, permission was granted subject to grant of recognition by the Council . As no recognition was granted by the Council, the learned Single Judge was right in refusing prayer of the petitioner institution to declare results of the students who had studied and appeared at the examination. It is true that ultimately students who had studied in the petitioner institution had to suffer, but there is no way out. In several

cases, the Supreme Court has observed that students who had not prosecuted study in a recognised school, should not be permitted to appear at the examination and in exercise of extraordinary powers under Article 226 of the Constitution, a High Court should not direct the Boar to take their examination or to declare results of such students. It would amount to misplaced sympathy and such sympathy should not be shown in favour of such students.

In the light of the settled legal position by dismissing the petition filed by the petitioner institution, the learned Single Judge has not committed any error of law. No illegality can be said to have been committed by the learned Single Judge . Though the present appeal is filed by the appellants who were students who have studied in the petitioner institution, as the institution itself has not been granted recognition by the Council, the ratio laid down in the above decisions would apply and no relief can be granted in favour of the appellants also.

For the foregoing reasons, we see no infirmity in the reasoning of the learned Single Judge and the conclusion arrived at by him cannot be said to be faulty. In the result, the appeal deserves to be dismissed and is accordingly dismissed. No order as to costs.

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April 10, 2000.

Mr. B.P.Tanna, learned counsel for the appellants states that it may be clarified that the above observations would not come in the way of the appellants or the institution as the Council has visited the institutiuon and has made inspection. We make it clear that the above observations or the dismissal of LPA would not come in the way of the institution or the students.

Mr. Shethna, learned counsel for respondent No.4 states that after the hearing of LPA was over, and before the pronouncement of judgmenht today, the recognition which was pending before the Council has been rejected. He further states that there has been no inspection after the LPA was heard by the Division Bench. We record his statement.

(D. M. Dharmadhikar, C.J.)

(C. K. Thakker, J.)

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